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■ A C.I.A.-A.C.L.U. DEAL?

The Operational Files Exemption

ANGUS MACKENZIE

The American Civil Liberties Union, the Central Intelligence Agency and Senate Intelligence Committee chairman Barry Goldwater have become strange bedfellows in the latest effort to exempt the agency from the Freedom of Information Act—Senate bill 1324. Although the A.C.L.U., the C.I.A. and the senators will be nit-picking over the language of the bill during the markup sessions, which begin in the coming weeks, they have already agreed on its key provision, which exempts the agency's "operational files" from F.O.I.A. search and disclosure requirements.

S. 1324 is a revision of a bill proposed in 1979 by then-C.I.A. Deputy Director Frank C. Carlucci, which the A.C.L.U. opposed at the time. The new version was drawn up by the C.I.A.'s legal representatives in cooperation with Senator Goldwater. It was introduced in Congress after the A.C.L.U. informally agreed to the operational-files exemption.

The A.C.L.U. and the C.I.A. claim that the exemption would not expand the C.I.A.'s authority to withhold documents. Under the F.O.I.A., the agency may deny requests for information that relates to national security matters or that reveals confidential sources and investigative techniques. They contend that since operational files invariably contain such information, they are never released. Freeing the agency of the requirement that it conduct time-consuming searches of files that are never released, proponents say, would enable it to process other F.O.I.A. requests more expeditiously.

Critics of the proposed legislation counter that the term "operational files" is so broadly defined that it will amount to a total exemption from the F.O.I.A., permitting the agency to cover up illegal domestic spying and other wrongdoing. Many information act experts say the C.I.A. has taken the A.C.L.U. for a ride.

The deal between the C.I.A. and the A.C.L.U. was initially discussed in informal conversations between the agency's Deputy Counsel, Ernest Mayerfeld, and A.C.L.U. attorney Mark H. Lynch, who have been friendly enemies in F.O.I.A. court battles for seven years. As Lynch put it, "We're two guys who've spent a lot of time in court

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will not ever again be a repeat of the improprieties of the past," he said. "And let me assure you that Bill Casey and I consider it our paramount responsibility that the rules and regulations not be violated."

Leaving aside the C.I.A.'s assurances that it will speed up the release of information, what does the bill itself say? The heart of the proposed legislation is the definition of "operational files." The agency and the A.C.L.U. agree that if the bill is passed, such files will no longer be subject to the search process—that they will be, in short, exempt from the F.O.I.A. But they disagree substantially over just what operational files are.

Mayerfeld told me that operational files deal with foreign intelligence, counterintelligence and counterterrorism operations; investigations to determine the suitability of potential foreign intelligence sources; "security liaison arrangements" with other intelligence agencies; and information exchanges with foreign governments. Mayerfeld's definition covers most of the agency's business, except—perhaps—intelligence reports derived from operational files. I say "perhaps" because some critics of the bill believe that even those reports could be exempt under the proposed legislation.

Let us examine some of Mayerfeld's categories. Take "counterintelligence operations," for example. Those operations include C.I.A. domestic spying, which President Reagan authorized in his executive order of December 4, 1981. If the Senate bill is passed, files on domestic spying could presumably be exempt from F.O.I.A. inquiries.

Files relating to past counterintelligence operations like Operation Chaos, which spied on the antiwar and civil rights movements and the underground press between 1967 and 1974, might also be exempt. Some of the activities carried out under Operation Chaos were revealed in 1976 by Senator Frank Church's Select Committee on Intelligence. And stories about the operation based on information obtained under the F.O.I.A. have appeared in the press. But the complete account has not emerged, and a C.I.A. source told my attorney that the agency has two roomfuls of unreleased Chaos files.

Opinion is divided on whether that material would be exempt under the Senate bill. Lynch told me the documents could be made public since Operation Chaos was the subject of a Congressional investigation and the House version of

Angus Mackenzie is an associate of the Center for Investigative Reporting, where he directs the Freedom of Information Project, which is co-sponsored by the Media Alliance.

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Questions Remain Over Judicial Review of Director's Decisions

C.I.A. Data Access Runs Into Snags

(orig under Pear)

By ROBERT PEAR



Associated Press
John N. McMahon

WASHINGTON — In the spring, when it looked as if the Central Intelligence Agency and the American Civil Liberties Union might agree on amendments to the Freedom of Information Act, many people saw a case of curious bedfellows.

It was a surprise to see the agency abandon its drive for complete exemption from the disclosure law. It was perhaps even more remarkable to see the civil liberties union willing to consider a new exception to a law that the A.C.L.U. itself describes as "one of the most important pieces of legislation ever enacted by Congress."

Under the proposal, offered by Senator Barry Goldwater, Republican of Arizona, the agency's "operational files," which show how it gathers intelligence, would be exempt from disclosure, and the agency would not have to search such files in response to Freedom of Information requests. But unclassified political, economic and scientific intelligence would still be accessible to the public and citizens could still tap agency files to obtain information about themselves.

The C.I.A. helped draft the bill. John N. McMahon, Deputy Director of Central Intelligence, promised that if the operational files were exempt from search and review, "the public would receive improved service from the agency under the Freedom of Information Act without any meaningful loss of information now released." He said he "hoped" the agency could substantially reduce the two- to three-year wait that requesters must now endure.

So far as can be ascertained, both the agency and the civil liberties union entered negotiations in good faith. Senator Joseph R. Biden Jr., Democrat of Delaware, said the bill reflects a rare "spirit of moderation and compromise." But as Government officials, lawyers, historians and journalists dissected the bill during two days of hearings before the Senate Select Committee on Intelligence in June, it became evident that many features of the bill needed to be clarified or refined. Mark H. Lynch of the A.C.L.U. said his organization would support the bill only if such questions were resolved.

Allan Adler, a lawyer at the A.C.L.U., insisted that his group had made "no deal" with the C.I.A. "We are regarded as a leading watchdog in the area of Freedom of Information," he said, "so some people may have been surprised that we didn't reflexively oppose the bill." But, he added, it is "wholly unacceptable" for the agency to have a long backlog of Freedom of In-

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ARTICLE APPEARED
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3 September 1983

Analysts Suspect Mis-Identification Led to the Attack

By Michael Getler
Washington Post Staff Writer

Still-secret tape recordings made by Japanese electronic listening posts of communications between a Soviet fighter pilot and his military ground controllers suggest to some American analysts that the pilot may have mis-identified the South Korean airliner that U.S. officials say he shot down from behind with a heat-seeking missile.

Two informed U.S. government sources said yesterday that throughout the crucial part of the communications that the Japanese were able to monitor—which covers about a half hour of the 2½ hours that the Soviets were tracking the Korean Air Lines plane—the Soviet fighter pilot never referred to the plane as an airliner but only as “the target.”

Speculation among U.S. officials is that Soviet pilots, in the early morning darkness near the Soviet island of Sakhalin, may have thought the big Boeing 747 airliner was an RC135 U.S. Air Force reconnaissance plane, a military version of the smaller and older 707 airliner.

One senior U.S. official said that, based on the available information, the Soviets are guilty of either “enormous callousness” in shooting down a plane they knew to be an airliner yet talked of only as a “target,” or “incredible incompetence” in failing to identify properly a 747 jumbo jet of unique size and shape and marked with Korean Air Lines lettering.

Secretary of State George P. Shultz, who yesterday accused the Soviet Union of a “brazen and elaborate” attempt to cover up “the truth that they shot down an unarmed civilian airliner,” said earlier that “a Soviet pilot reported visual contact with the aircraft.”

Shultz and White House spokesman Larry Speakes branded as untrue new Soviet claims that Soviet fighters had tried to warn the airliner’s pilot that he was flying in Soviet airspace and that he had done so intentionally as part of an intelligence-gathering operation.

Sources said yesterday that top U.S. officials anticipated that the Soviets would claim the airliner was on a spy mission and that President Reagan’s national security affairs adviser, William P. Clark, asked the deputy director of the CIA, John N. McMahon, to check whether there were any grounds for such a charge. The CIA assured the White House that there were none, the sources said.

One senior official, confirming that analysts thought there was a possibility that the Soviets had mis-identified the South Korean airliner, cautioned that the U.S. intelligence community, working from the translated Japanese tapes, does not have transcripts of the Soviet air-to-ground communications for the entire time that the passenger plane strayed over Soviet territory.

Nor are recordings available of communications with all eight of the Soviet jets that Shultz said were sent into the air to intercept the airliner at one time or another during that period.

He said it was possible that the pilot had told his commanders on the ground at some other point that the intruder was an airliner. But at this time, the source said, indications are that the plane was not identified properly by the fighter pilot.

Another senior administration official said that the statement yesterday by the Soviet news agency Tass made clear that Moscow’s “propaganda line for trying to wiggle out of this despicable act” of shooting down a South Korean jetliner with 269 persons aboard is to try to portray the plane as on a spy mission.

Speakes described such claims as “without foundation” as far as the United States was concerned. He added that the South Koreans “were not using that aircraft for any intelligence-gathering” of their own.

U.S. officials said there are clearly much better ways, such as with satellites and radar, to gather intelligence data than to send a passenger airliner of another country on a suicidal mission.

The Soviet statement yesterday and the response by Shultz and Speakes highlighted many unanswered questions about an episode that has shocked and outraged people around the world.

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Officials Call Attacks a Surprise; Questions Raised on Marine Role

By BERNARD GWERTZMAN

Special to The New York Times

WASHINGTON, Aug. 30 — Reagan Administration officials said today that the intensified attacks on Marine positions in Beirut had caught them by surprise and had raised new questions about the role of American forces in Lebanon.

Despite growing pressure from Congress for the President to invoke special provisions of the War Powers Resolution because of the fighting, President Reagan this afternoon refused to acknowledge any basic change in the situation.

The White House made public a letter from Mr. Reagan to Congress asserting that a truce had been achieved and "diplomatic efforts were under way to extend the cease-fire." He said

he was keeping Congress abreast of the situation but declined to invoke that portion of the War Powers Resolution that would force him to withdraw the marines after 90 days unless Congress voted its approval of keeping them there.

Beirut Quieter at Night

"I believe that the continued presence of these U.S. forces in Lebanon is essential to the objective of helping to restore the territorial integrity, sovereignty and political independence of Lebanon," he said. "It is still not possible to predict the duration of the presence of these forces in Lebanon. We will continue to assess this question in the light of progress toward this objective."

But the State Department, in a report issued at 6 P.M. today, was less categorical about a cease-fire. It said only that as of 4:30 P.M. (10:30 P.M., Beirut time) "the situation was becoming more quiet in Beirut."

Because of the attacks on American positions throughout the Beirut area, Vice President Bush convened a crisis-management group for the second day.

Larry Speakes, the White House spokesman, talking to reporters in Santa Barbara, Calif., where Mr. Reagan is on vacation, seemed to be opposing invoking the war powers provision when he said the fighting was "an isolated incident."

"If we were conducting combat operations, then it would be different," he said. "But we're not. The role there is as a peacekeeping force."

Mr. Reagan remained at his mountain ranch near Santa Barbara, relaxing, Mr. Speakes said. He spoke for about 10 minutes over the phone with William P. Clark, the national security adviser, and Edwin Meese 3d, the White House counselor, both of whom were at the Biltmore Hotel in Santa Barbara with other White House staff members.

Mr. Bush told Mr. Meese he was convoking the crisis group, known formally as the Special Situation Group. Others included in it were Secretary of State George P. Shultz, Mr. Weinberger, Deputy Director John McMahon of the Central Intelligence Agency and Gen. John W. Vessey Jr., chairman of the Joint Chiefs of Staff. This group, according to an aide, has been gathering information about events in the Middle East and has been making recommendations, generally forwarded by Mr. Bush to the President by telephone.

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CIA Lawyer Finds No Casey Conflict

United Press International

CIA Director William J. Casey had no conflict of interest between his extensive stock dealings and his secret information about world economic affairs, the agency's deputy counsel said yesterday.

Casey's financial disclosure report last month showed that he bought and sold as much as \$7 million in stocks last year, making many of his investments just as the stock market was making a major advance.

"The information contained in this report discloses no conflicts of interest under applicable laws and regulations," according to a certification by deputy counsel Ernest Mayerfeld to the Office of Government Ethics.

He said he signed the certification, due yesterday, on Thursday.

An agency spokesman said Mayerfeld screened each financial transaction "against the probability that the director had any inside knowledge that might present a conflict of interest."

The disclosures were reviewed by the ethics office to determine whether Casey had used his government position to profit in the stock market.

Unlike other top government officials, Casey has declined to place his holdings in a blind trust to avoid conflicts of interest. Instead, he submits his annual financial report to CIA Deputy Director John McMahon and to Stanley Sporkin, the agency's general counsel and the former head of enforcement for the Securities and Exchange Commission.

The screening began after disclosure in Casey's 1981 statement he had sold more than \$600,000 dollars in oil stocks as supplies began to become plentiful and prices dropped.

After a four-month investigation in 1981, the Senate Intelligence Committee found no basis for concluding that Casey was unfit to hold his office.